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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,444	04/24/2001	Xin Zhang	401185	1915
23548	7590	12/19/2006	EXAMINER	
LEYDIG VOIT & MAYER, LTD			JONES, HUGH M	
700 THIRTEENTH ST. NW				
SUITE 300			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20005-3960			2128	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/19/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/840,444	ZHANG ET AL.
	<b>Examiner</b> Hugh Jones	<b>Art Unit</b> 2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

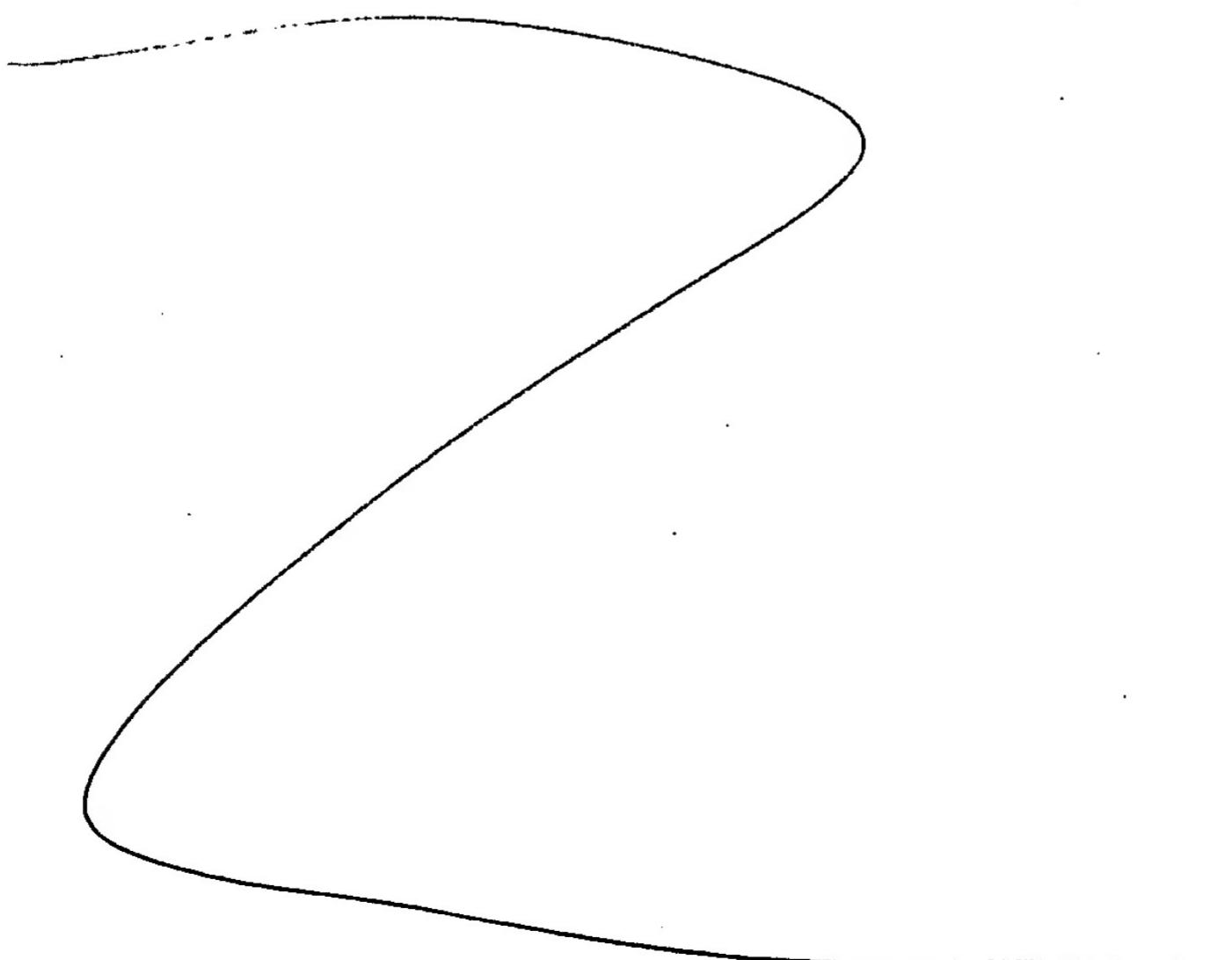
1. Claims 1-5 of U. S. Application 09/840,444 filed 04/24/2001 are presented for examination. Applicants are thanked for their response.

### Information Disclosure Statement

2. Applicants refer to a co-pending application and allege that it had been previously brought to the attention of the Examiner ("as previously explained"). Respectfully, this does not appear to be supported by the record, and the Examiner has no such recollection. If this is incorrect, please indicate where in the record that it has been mentioned:

This Amendment includes a correction to the specification in terms of the document incorporated by reference. As previously explained, there is a co-pending, simultaneously filed and commonly assigned patent application, U.S. Patent Application 09/840,862. In view of questions raised concerning the document incorporated by reference in the present and co-pending patent applications, an extensive investigation has been undertaken. That investigation indicates that the

3. Furthermore, this is not possible. See:



**(12) United States Patent**  
**Knab et al.**

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**(54) BASIC RACK**

**(75) Inventors:** Josef Knab, Rossbach (DE); Alexander Prinz, Postmuenster (DE); Siegfried Schneiderbauer, Rossbach (DE); Klaus Neowardt, Simbach (DE)

**(73) Assignee:** Knuerr-Mechanik fuer die Elektronik Aktiengesellschaft, Munich (DE)

**(\*) Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

**(21) Appl. No.: 09/840,862**

4. Respectfully, in the interests of timely and compact prosecution of this application, clarification of the record is again requested. Respectfully, there has been a great deal of confusion as a consequence of the various papers and specifications,

**Specification**

5. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously

incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

6. Applicants rely on the paper for essential matter. Furthermore, Applicants in traversing enablement rejections pointed to the document for enablement.
7. The attempt to incorporate subject matter into this application by reference to *Li* is also ineffective for the following reasons. The issues regarding authorship cannot be resolved by argument. The incorporation by reference, as it stands, incorporates by reference a paper that, legally, does not exist. Factual evidence is required to traverse the issue.

#### **Claim Rejections - 35 USC § 102**

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Li et al..

10. Li et al. disclose integrated CAD for functional textiles and apparel. See figures 3-6; especially note figure 5, which discloses CAD technology for mechanical functional design. The Li et al. paper is by *another inventive entity*.

11. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Okabe et al..

12. Okabe et al. discloses

1) A method of creating thermal functional designs of textiles and clothing using a computer and visual display monitor controlled by the computer, the method comprising:

supplying the computer information from databases relating to biomechanical and structural characteristics of human body and structural and mechanical characteristics of chosen textile materials for computational simulation of the information (fig. 1-2), and

creating visual images for the monitor showing modules of structural functional designs (fig. 1-3).

2) The method according to claim 1 in which the database of the human body comprises human model data specific body functions, including size and shape (fig. 1-2).

3) The method according to claim 1 in which the database of the garments comprises clothing patterns data and product specification data (fig. 1-2).

4) The method according to claim 1 in which the database of the human body comprises mechanical property data, including clothing biomechanical and mechanical comfort data (fig. 1, section 4).

5) the method according to claim 1 in which the database textile materials comprises structural and mechanical property data, including fibres, yarns, fabrics and garments (fig. 1-2).



**Response to Arguments**

13. Applicant's arguments of 11/13/2006 have been carefully reviewed, and are not persuasive.
14. With respect to authorship of the paper and related issues; an affidavit signed by the inventor is required.
15. Applicants refer to a co-pending application and allege that it had been previously brought to the attention of the Examiner. Respectfully, this does not appear to be supported by the record. If this is incorrect, please indicate where in the record that it has been mentioned:

This Amendment includes a correction to the specification in terms of the document incorporated by reference. As previously explained, there is a co-pending, simultaneously filed and commonly assigned patent application, U.S. Patent Application 09/840,862. In view of questions raised concerning the document incorporated by reference in the present and co-pending patent applications, an extensive investigation has been undertaken. That investigation indicates that the

16. Furthermore, this is not possible. See:

**(12) United States Patent**  
**Knab et al.**

---

**(54) BASIC RACK**

(75) Inventors: Josef Knab, Rossbach (DE); Alexander Prinz, Postmuenster (DE); Siegfried Schnelderbauer, Rossbach (DE); Klaus Neuwoldt, Simbach (DE)

(73) Assignee: Knuerr-Mechanik fuer die Elektronik Aktiengesellschaft, Munich (DE)

(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: 09/840,862

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17. Applicants argues against physically incorporating the paper:

The Examiner demanded that the specification be amended to include the material appearing in the publication incorporated by reference in the patent application. Applicants respectfully traverse this requirement. As initially pointed out to the Applicants' representative, the publication incorporated by reference is available on the Internet at the address indicated above. Further, the disclosure of the present patent application is similar in pertinent part to the publication. For these reasons, incorporation by reference to the publication is sufficient to meet the disclosure requirements of 35 USC 112 so that the Examiner is requested to reconsider and withdraw the requirement for the addition of passages of the publication to the specification.

The Examiner regrets Applicant's tone. Applicants are referred to MPEP 608 for office procedure regarding incorporation by reference.

18. Applicants rely on the paper for essential matter. Furthermore, as pointed out in a previous action, Applicants in traversing enablement rejections pointed to the document for enablement. Specifically, the 112 rejections were withdrawn in view of the response of 6/27/2005:

The Official Action objects to claims 1-5 under 35 U.S.C. § 112, first paragraph, as reciting subject matter not enabled by the specification. That rejection is respectfully traversed.

The Official Action contends that the following limitations are not enabled by the specification:

- "supplying the computer information from databases relating to biomechanical and structural characteristics of a human body and structural and mechanical characteristics of chosen textile materials for computational simulation of the information"
- "creating visual images for the monitor showing modules of structural functional designs."

Applicants submit, however, that one of ordinary skill in the art of modeling the mechanics of human/textile interaction would have been sufficiently enabled by the disclosure of the patent application to practice the invention claimed. In support of Applicants' contention, a copy of the paper entitled "Advanced Computing Technology for Integrated Design of Textiles and Apparel" by Y. Li (hereinafter, the Li paper) is attached to this Response. The Li paper is incorporated by reference in the patent application and, therefore, is part of the disclosure. See page 4, lines 11-16 of the patent application. This publication demonstrates that one of ordinary skill in the art was enabled to model biomechanical characteristics or textile

In the present response, Applicants argue:

The Examiner demanded that the specification be amended to include the material appearing in the publication incorporated by reference in the patent application. Applicants respectfully traverse this requirement. As initially pointed out to the Applicants' representative, the publication incorporated by reference is available on the Internet at the address indicated above. Further, the disclosure of the present patent application is similar in pertinent part to the publication. For these reasons, incorporation by reference to the publication is sufficient to meet the disclosure requirements of 35 USC 112 so that the Examiner is requested to reconsider and withdraw the requirement for the addition of passages of the publication to the specification.

19. These arguments are not understood. *The incorporated material is essential matter and must be physically incorporated.*
20. The Li rejection is maintained until Applicants provide an affidavit.
21. As for Okabe, see, for example, figure 1. Compare to claim 1:

1. (Currently Amended) A method of creating mechanical functional designs of textiles and clothing using a computer and visual display monitor controlled by the computer, the method comprising:  
supplying the computer with information from ~~database~~ databases relating to biomechanical and structural characteristics of a human body and structural and mechanical characteristics of chosen textile materials for computational simulation of the information, and  
creating visual images for the monitor showing modules of ~~structural mechanical~~ functional designs.

### Conclusion

22. This is an RCE of applicant's earlier Application No. 09/840,444. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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23. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

24. **Any inquiry concerning this communication or earlier communications from the examiner should be:**

directed to: Dr. Hugh Jones telephone number (571) 272-3781,  
Monday-Thursday 0830 to 0700 ET,

**or**

the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279.  
Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, telephone number (703) 305-3900.

**mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 308-9051 (for formal communications intended for entry)  
**or** (703) 308-1396 (for informal or draft communications, please label  
*PROPOSED* or *DRAFT*).

Dr. Hugh Jones

HUGH JONES Ph.D.  
PRIMARY PATENT EXAMINER  
TECHNOLOGY CENTER 2100